

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CHARLES R. GHOLDSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 00-051-SLR
	)	
ROBERT SNYDER, Warden,	)	
	)	
Respondent.	)	
	)	

**MEMORANDUM ORDER**

**I. INTRODUCTION & BACKGROUND**

Currently before the court is petitioner Charles Gholdson's application for habeas corpus relief filed pursuant to 28 U.S.C. § 2254. (D.I. 2) A grand jury indicted petitioner in March 1993, charging him with trafficking in cocaine, possession with the intent to deliver cocaine, resisting arrest, and tampering with physical evidence. In July 1993, a jury convicted him of all four counts. The Superior Court sentenced petitioner to 20 years at Level V imprisonment. On direct appeal, petitioners's defense counsel filed a brief pursuant to Delaware Supreme Court Rule 26(c) ("Rule 26(c)"). Defense counsel raised one arguably appealable issue, i.e., that the Superior Court erred in denying petitioner's motion to suppress. Petitioner did not

present any issues on his behalf, including ineffective assistance of counsel which was raised by petitioner at trial and denied by the Superior Court. The Delaware Supreme Court affirmed petitioner's conviction and sentence on direct appeal pursuant to Rule 26(c). Gholdson v. State, No. 357, 1993, 1994 Del. LEXIS 134, (Del. April 29, 1994).

On April 28, 1997, petitioner filed his first motion for postconviction relief. Petitioner raised the same claim as his counsel did on direct appeal. The Delaware Superior Court denied petitioner's first postconviction motion, finding that the claim was barred pursuant to Superior Court Criminal Rule 61(i)(4). The Delaware Supreme Court affirmed on appeal. Gholdson v. State, No. 240, 1997, 1997 Del. LEXIS 398, (Del. Nov. 7, 1997).

On July 7, 1998, petitioner again moved for postconviction relief. Petitioner raised three claims for relief: (i) that his counsel was ineffective for questioning petitioner on direct examination about a prior felony conviction; (ii) that the Superior Court erred in admitting petitioner's testimony about the prior felony conviction; and (iii) that the police conducted an "unlawful stop and arrest in violation of 'petitioner's 4th and 14th Amendment Rights." By order dated October 20, 1998, the Superior Court denied

petitioner's second postconviction motion finding that the claims were procedurally barred pursuant to Rule 61(i)(1) and (4). The Supreme Court of Delaware affirmed the decision on November 7, 1997.

Petitioner, in this habeas petition, advances four claims:

(1) his conviction was supported by evidence unlawfully seized by the police; (2) the state court misapplied California v. Hodari D., 499 U.S. 621 (1991); (3) the state court erred by admitting petitioner's testimony about his prior felony conviction; and (4) trial counsel was ineffective in asking petitioner about his felony conviction.

## **II. DISCUSSION**

On April 24, 1996, President Clinton signed into law the Antiterrorism and Effective Death Penalty Act ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214 (1996). AEDPA amended the standards for reviewing state court judgments in § 2254 proceedings. Since petitioner's habeas petition was filed following the enactment of AEDPA, the court will apply the amended standards set forth in AEDPA to petitioner's claims for federal habeas corpus relief. See Lindh v. Murphy, 521 U.S. 320, 326-27 (1997).

AEDPA imposes a one-year statute of limitations on the filing of a federal habeas petition by a state prisoner. See 28 U.S.C. § 2244(d)(1); Miller v. New Jersey State Dep't of Corrections, 145 F.3d 616, 619 n.1 (3d Cir. 1998) (holding that the one-year limitations period set forth in § 2244(d)(1) is a statute of limitations subject to equitable tolling, not a jurisdictional bar). The one-year limitations period begins to run from the latest of:

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

Id. AEDPA further provides that the statute of limitations is tolled during the time that a state prisoner is attempting to exhaust his claims in state court. See id. § 2244(d)(2).

Section 2244(d)(2) states that, "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." Id. A "properly filed application" under § 2244(d)(2) is a petition "submitted according to the state's procedural requirements, such as the rules governing the time and place of filing." Lovasz v. Vaughn, 134 F.3d 146, 148 (3d Cir. 1998). Such a petition is considered "pending" within the meaning of § 2244(d)(2) during the time a state prisoner is pursuing his state postconviction remedies, including the time for seeking discretionary review of any court decisions whether or not such review was actually sought. See Swartz v. Meyers, 204 F.3d 417, 424 (3d Cir. 2000).

Because petitioner's conviction became final before the effective date of AEDPA, his limitations period for filing a habeas corpus application began to run on April 24, 1996 -- the effective date of AEDPA and the beginning of the one-year grace period for claims arising prior to AEDPA's effective date. See Burns v. Morton, 134 F.3d 109, 111 (3d Cir. 1998). The Third Circuit has explained that the effect of its ruling in Burns is to "make . . . all other convictions in this

circuit otherwise final before the effective date of the AEDPA, April 24, 1996, final on that day for purposes of calculating the limitations period." United States v. Duffus, 174 F.3d 333, 334 (3d Cir. 1999). Petitioner filed his application for habeas corpus relief on January 11, 2000.<sup>1</sup> Thus, petitioner filed his habeas corpus applications well after the end of the limitations period, and his applications for habeas corpus relief are therefore time-barred.

The tolling provisions of § 2244(d)(2) do not save petitioner from the limitations period. Section 2244(d)(2) tolls the one-year period of limitations during the pendency of state postconviction relief proceedings. Since petitioner's conviction became final before the effective date of AEDPA, the statute of limitations with respect to petitioner began to run on April 24, 1996, when AEDPA took

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<sup>1</sup>The Third Circuit has held that a pro se prisoner's § 2254 petition is deemed filed for purposes of satisfying § 2244(d)(1) "the moment he delivers it to prison officials for mailing to the district court." Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998). In the instant action, petitioner has not presented the court with proof of the date upon which he delivered his application to prison officials for mailing. The petition, however, is dated January 11, 2000, and it was received by the court on January 14, 2000. (D.I. 2) As such, the court finds that petitioner delivered the petition to prison officials sometime between January 11 and January 14, 2000. In the absence of proof of the exact date of mailing, the court will treat January 11, 2000 as the filing date. See Murphy v. Snyder, C.A. No. 98-415-JJF, at 4 (D. Del. Mar. 8, 1999) (unpublished opinion).

effect, and expired one year later on April 23, 1997.

Petitioner's first application for postconviction relief was filed on April 28, 1997 - after the expiration of the statute of limitations. Thus, petitioner's time frame to file a habeas petition had expired before he filed anything that would toll the statute of limitations. Furthermore, the limitations period does not start anew each time petitioner files a state collateral attack. Gray v. Waters, 26 F. Supp.2d 771, 772 (D. Md. 1998). The court finds the petition is untimely.

**III. CONCLUSION**

THEREFORE, at Wilmington this 9th day of May 2001;

IT IS ORDERED that:

1. Petitioner's application seeking habeas relief pursuant to 28 U.S.C. § 2254 (D.I. 1) is dismissed and the writ is denied.

2. A certificate of appealability is denied.

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United States District Judge